

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TEXAS,  
BEAUMONT DIVISION

----- X  
TRACY BYRD AND MICHELLE BYRD, :  
: :  
Plaintiffs, : CIVIL ACTION NO.  
vs. : :  
AFTRA HEALTH & RETIREMENT FUNDS, :  
A/K/A AFTRA H&R, : :  
: Jury Demand  
: :  
Defendant. : :  
----- X

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**NOTICE OF REMOVAL**

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**INDEX**

**Notice of Removal**

**Index**

**Exhibit A** Citation and Original Petition in Cause No. E-0194424,  
*Tracy Byrd and Michelle Byrd v. AFTRA Health & Retirement Funds a/k/a AFTRA H&R*, In the 172<sup>nd</sup> Judicial District Court of Jefferson County, T e x a s, together with correspondence re service from Secretary of State of Texas, and discovery served with Petition

**Exhibit B** Original Answer of Defendant AFTRA Health & Retirement Funds a/k/a AFTRA H&R to Plaintiff's Original Petition.

**Exhibit C** Certified copy of State Court docket sheet in Cause No. E-0194424, *Tracy Byrd and Michelle Byrd v. AFTRA Health & Retirement Funds a/k/a AFTRA H&R*, In the 172<sup>nd</sup> Judicial District Court of Jefferson County, T e x a s.

**Exhibit D** Orders from the State Court in this case served upon Defendant Funds

Index (Page 2)

**Exhibit E**

List of all parties to case and party type, together with list of counsel of record, including addresses, telephone numbers and parties represented.

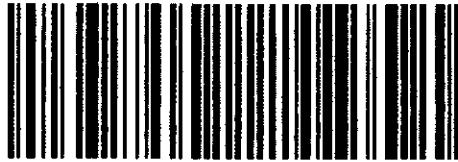
UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TEXAS,  
BEAUMONT DIVISION

----- X  
TRACY BYRD AND MICHELLE BYRD, :  
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vs. : :  
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A/K/A AFTRA H&R, : :  
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## Exhibit A

Citation and Original Petition in Cause No. E-0194424,  
*Tracy Byrd and Michelle Byrd v. AFTRA Health &*  
*Retirement Funds a/k/a AFTRA H&R*, In the 172<sup>nd</sup>  
Judicial District Court of Jefferson County, T e x a s,  
together with correspondence re service from Secretary  
of State of Texas and discovery served with Petition  
by Plaintiffs

Secretary of State  
Service of Process  
P.O. Box 12079  
Austin, Texas 78711-2079



7190 1046 4701 0019 9940

**Return Receipt (Electronic)**

**AFTRA H&R FUNDS**

**JUL 17 2013**

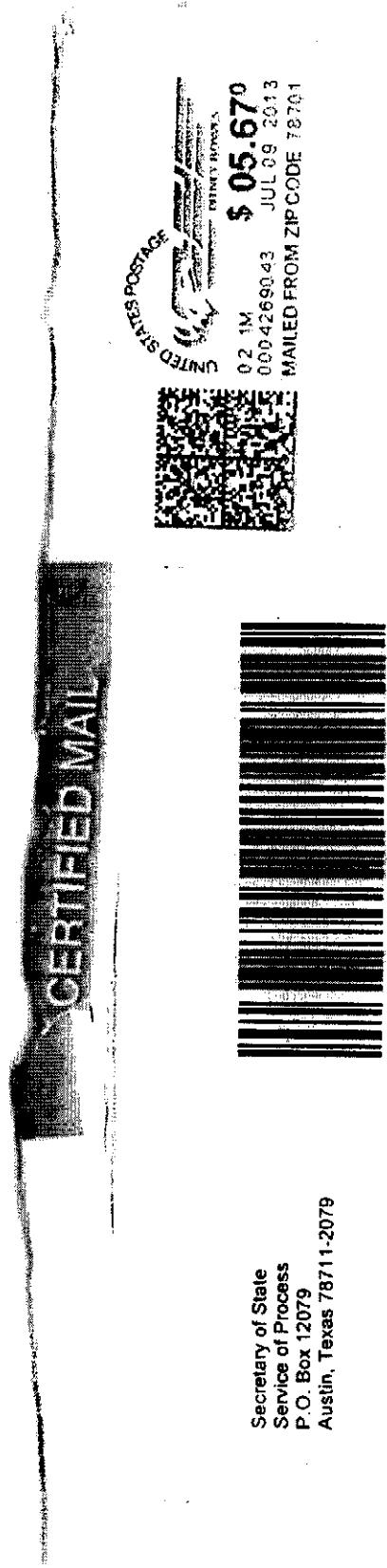
**APPEALS**

2013229166-1

Aftra Health And Retirement Funds AKA Aftra H And R  
261 Madison Ave 7th Fl  
New York, NY 10016-2312

---

CUT / FOLD HERE



Return Receipt (Electronic)

7190 1046 4701 0019 9940

AFTRA H&R FUNDS

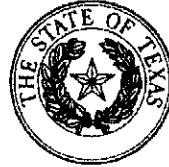
JUL 17 2013

APPEALS

2013229166-1

Aftra Health And Retirement Funds AKA Afra H And R  
261 Madison Ave 7th Fl  
New York, NY 10016-2312

The State of Texas



Service of Process  
P.O. Box 12079  
Austin, Texas 78711-2079

Phone: 512-463-5560  
Fax: 512-463-0873  
TTY (800) 735-2989  
[www.sos.state.tx.us](http://www.sos.state.tx.us)

Secretary of State

July 8, 2013

Aftra Health And Retirement Funds AKA Aftra  
H And R  
261 Madison Ave 7th Fl  
New York, NY 10016-2312

**2013-229166-1**  
Include reference number in  
all correspondence

RE: Tracy Byrd et al Vs Aftra Health And Retirement Funds  
172nd Judicial District Court Of Jefferson County, Texas  
Cause No: E0194424

**AFTRA H&R FUNDS**  
**JUL 17 2013**

Dear Sir/Madam,

**APPEALS**

Pursuant to the Laws of Texas, we forward herewith by CERTIFIED MAIL, return receipt requested, a copy of process received by the Secretary of State of the State of Texas on July 3, 2013.

CERTIFIED MAIL #71901046470100199940

Refer correspondence to:

B. Adam Terrell  
Weller, Green, Toups & Terrell, L.L.P.  
P.O. Box 350  
Beaumont, TX 77704-0350

Sincerely,

A handwritten signature in black ink, appearing to read "Helen Lupercio".

Helen Lupercio  
Team Leader, Service of Process  
CT/gl  
Enclosure



C0194424-00004

CITATION

THE STATE OF TEXAS

No. E-0194424

AFTRA H&R FUNDS

TRACY BYRD ET AL  
VS. AFTRA HEALTH AND RETIREMENT FUNDS

JUL 17 2013

APPEALS

CITATION

172nd JUDICIAL DISTRICT COURT  
of JEFFERSON COUNTY, TEXAS

To: AFTRA HEALTH AND RETIREMENT FUNDS  
AKA AFTRA H AND R  
BY SERVING TEXAS SECRETARY OF STATE

by serving at:

FORWARD TO  
261 MADISON AVENUE 7TH FLOOR  
NEW YORK, NY 10016-2312

DEFENDANT:

NOTICE:

You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you. Said answer may be filed by mailing same to: District Clerk's Office, 1001 Pearl St., 2<sup>nd</sup> floor, Beaumont, TX 77701, (or if the case is designated as an E-file case, E-file through Lexis Nexis file and serve) or by bringing it to the office. The case is presently pending before the 172nd District Court of Jefferson County sitting in Beaumont, Texas, and was filed on the 7th day of June, 2013. It bears cause number E-0194424 and is styled:

TRACY BYRD ET AL  
VS.  
AFTRA HEALTH AND RETIREMENT FUNDS

Plaintiff:

Defendant:

The name and address of the attorney for plaintiff (or plaintiff if pro se) is:

TERRELL, B ADAM, Atty.  
2615 CALDER SUITE 400  
BEAUMONT, TX 77702-0

The nature of the demands of said plaintiff is shown by a true and correct copy of Plaintiff's PETITION (PLAINTIFF'S ORIGINAL) ALSO ATTACHED JURY DEMAND REQ FOR DISCLOSURE AND ORDER DESIGNATING ALL CASES EFILE accompanying this citation and made a part thereof.

Issued under my hand and the seal of said court at Beaumont, Texas, this the 7th day of June, 2013.

LOLITA RAMOS, DISTRICT CLERK  
JEFERSON COUNTY, TEXAS

RECEIVED  
SECRETARY OF STATE  
JUL - 3 2013

BY  
Ida

*Ada Powell*

Deputy

Service of Process

229166

RETURN OF SERVICE

E-0194424 172nd JUDICIAL DISTRICT COURT

TRACY BYRD ET AL

AFTRA HEALTH AND RETIREMENT FUNDS

Executed when copy was delivered:

This is a true copy of the original citation, was delivered to defendant \_\_\_\_\_, on the \_\_\_\_\_ day of  
\_\_\_\_\_, 20\_\_\_\_\_.  
\_\_\_\_\_, Officer

\_\_\_\_\_, County, Texas  
By: \_\_\_\_\_, Deputy

**ADDRESS FOR SERVICE:**

AFTRA HEALTH AND RETIREMENT FUNDS

AKA AFTRA H AND R

NEW YORK, NY 10016 2312

OFFICER'S RETURN

Came to hand on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, at \_\_\_\_\_, o'clock \_\_\_\_\_.m., and executed in  
\_\_\_\_\_, County, Texas by delivering to each of the within named defendants in person, a true copy of this Citation  
with the date of delivery endorsed thereon, together with the accompanying copy of the Citation at the following times and places, to-wit:

Name	Date/Time	Place, Course and Distance from Courthouse
_____	_____	_____

And not executed as to the defendant(s), \_\_\_\_\_

The diligence used in finding said defendant(s) being:  
\_\_\_\_\_

and the cause or failure to execute this process is:  
\_\_\_\_\_

and the information received as to the whereabouts of said defendant(s) being:  
\_\_\_\_\_

**FEES:**

Serving Petition and Copy \$ \_\_\_\_\_

Total \$ \_\_\_\_\_, Officer  
\_\_\_\_\_, County, Texas

By: \_\_\_\_\_, Deputy

Affiant

**COMPLETE IF YOU ARE A PERSON OTHER THAN A SHERIFF, CONSTABLE, OR CLERK OF THE COURT.**

In accordance with Rule 107: The officer or authorized person who serves, or attempts to serve, a citation shall sign and return. The signature  
is not required to be verified. If the return is signed by a person other than a sheriff, constable or the clerk of the court, the return shall be  
signed under penalty of perjury and contain the following statement:

"My name is \_\_\_\_\_, my date of birth is \_\_\_\_\_, and my address is  
(First, Middle, Last)

(Street, City, Zip)

I DECLARE UNDER PENALTY OF PERJURY THAT THE FORGOING IS TRUE AND CORRECT.

Executed in \_\_\_\_\_, County, State of \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_.

Declarant/Authorized Process Server

(Id # expiration of certification)

AFTRA H&R FUNDS

JUL 17 2013

APPEALS

NO. E194-4524

TRACY BYRD and MICHELLE BYRD

\$

IN THE DISTRICT COURT OF

VS.

\$

JEFFERSON COUNTY, TEXAS

AFTRA HEALTH & RETIREMENT  
FUNDS, AKA AFTRA H&R

\$

170nd JUDICIAL DISTRICT

**PLAINTIFF'S ORIGINAL PETITION**

**TO THE HONORABLE JUDGE OF SAID COURT:**

**COME NOW** Tracy Byrd and Michelle Byrd, Plaintiffs, complaining of Aftra Health & Retirement Funds, aka Aftra H&R, Defendant, and for cause of action shows:

I.

Plaintiffs Tracy Byrd and Michelle Byrd plead that discovery should be conducted in accordance with a tailored discovery control plan under Civil Procedure Rule 190.4.

II.

Plaintiffs Tracy Byrd and Michelle Byrd are residents of Jefferson County, Texas.

Defendant AFTRA Health & Retirement Funds, aka AFTRA H&R, is a corporation, company, partnership or other entity duly formed and existing under the laws of some state other than Texas. Defendant, at all time material to this action, is and has engaged in business in Texas, as more particularly described below. Defendant does not maintain a place of regular business in Texas and has no designated agent on whom service of citation may be made in this cause. The cause of action asserted arose from or are connected with purposeful acts committed by the defendant in Texas because Defendant regularly conducts business in Texas by entering into health care plans with Texas residents, including Plaintiffs. Defendant's breach of the plan is the basis of Plaintiffs' cause of action. Accordingly, Defendant may be cited by serving the Secretary of State of Texas provided that the citation and petition are forwarded to defendant's address, AFTRA Health & Retirement Funds, 261 Madison Avenue, 7th Floor, New York, NY,

10016-2312, by registered or certified mail, return receipt requested.

III.

On July 17, 2012, Plaintiffs were participants in the AFTRA Health & Retirement Funds Plan. Under the terms of the plan, Plaintiffs were entitled to health care benefits, including but not limited to hospital, major medical, prescription drug, and wellness benefits.

IV.

On July 17, 2013, Plaintiffs were involved in a motor vehicle accident causing severe personal injuries and requiring medical treatment and hospitalization.

V.

Plaintiffs, or their health care providers on behalf of Plaintiffs, completed paperwork necessary to make a claim on such benefits to provide payment to Plaintiffs' health care providers. Despite the fact that all conditions precedent to the Defendant's obligation to pay the Plaintiffs' losses under the plan were performed or did occur, Defendant failed and refused, and continues to fail and refuse, to pay for providers for Plaintiffs' treatment, causing Plaintiffs to suffer that loss together with other harm as described further in this petition.

VI.

From and after the time the Plaintiffs' claim was presented to the Defendant, the Defendant's liability to pay the claim in accordance with the terms of the plan was reasonably clear. Despite there being no basis whatsoever on which a reasonable insurance company or health care plan would have relied to deny payment of the Plaintiffs' claim, the Defendant refused to accept the claim and pay the claims as the policy required.

VII.

At that time, the Defendant knew or should have known by the exercise of reasonable diligence that its liability was reasonably clear. In this regard, the Plaintiffs will

show that the Defendant failed to conduct a reasonable, proper investigation of the claim and refused to rely on the true facts, resorting instead to producing faulty, incomplete, and biased reasons as subterfuges to avoid paying a valid claim. Consequently, the Defendant breached its duty to deal fairly and in good faith with the Plaintiffs. The Defendant's breach was a proximate cause of the losses, expenses, and damages suffered by the Plaintiffs as more specifically described below.

VIII.

On September 24, 2012 and several times thereafter, Defendants were apprised of the facts relating to the Plaintiffs' claim under the plan. Thereafter, the Defendant acknowledged receipt of the claim, requested certain documentation and other papers from the Plaintiffs. The Plaintiffs fully cooperated with the Defendant and, by September 24, 2012, had furnished the Defendant all the items, statements, bills, and other papers requested. Notwithstanding such cooperation, Defendant to this day continues to refuse to pay the benefits afforded by the plan. Although more than 60 days elapsed from the time the Defendant received all the items requested to process the Plaintiffs' claim, the claim was not paid by the Defendant. Thus, the Plaintiffs are entitled to recover the additional sum of 18 percent per annum on the Plaintiffs' damages as described in this petition from September 24, 2012, until the day before the judgment for the Plaintiffs in this case is signed.

IX.

The Defendant's conduct in this matter was the producing and proximate cause of harm to the Plaintiffs in at least the following respects:

- a. The Plaintiffs have lost the benefits and protections afforded by the policy of insurance purchased from the Defendant in an amount not to exceed \$75,000.00.
- b. The Plaintiffs have suffered severe mental anguish stemming from the

Defendant's knowing misconduct as described above, with the result that the Plaintiffs have been unable to conduct the normal, day-to-day affairs of business and personal life without extreme anxiety.

- c. The Plaintiffs' reputation for good credit has been seriously tarnished as a result of the Defendant's conduct.

X.

Because of the conduct of the Defendant, the Plaintiffs have been compelled to engage the services of an attorney to prosecute this action. The Plaintiffs are entitled to recover a reasonable sum for the necessary services of the attorney in the preparation and trial of this action and for any appeals to the court of appeals or the Texas Supreme Court.

WHEREFORE, Plaintiffs requests that the Defendant be cited to appear and answer and, on final trial of this cause, the Plaintiffs recover judgment against the Defendant in a sum in excess of the minimum jurisdictional limits of this Court, but not exceeding the sum of \$75,000.00, as the benefits payable under the plan made the basis of this suit, the harm suffered by the Plaintiffs and described in this petition, attorney's fees, prejudgment and postjudgment interest as provided by law, and costs of suit.

Respectfully submitted,

**WELLER, GREEN, TOUPS & TERRELL, L.L.P.**

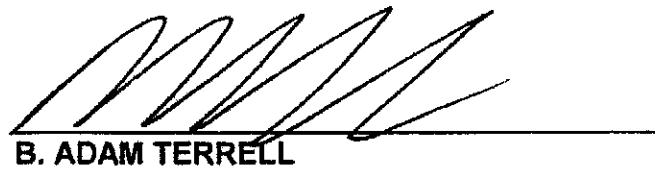
By:

  
**B. ADAM TERRELL**  
Texas Bar No. 19790900  
Post Office Box 350  
Beaumont, TX 77704-0350  
Phone: (409) 838-0101  
Fax: (409) 832-2940

**ATTORNEYS FOR PLAINTIFFS**

**JURY DEMAND**

Plaintiff respectfully requests a trial by jury.



A handwritten signature consisting of several overlapping, curved, diagonal strokes forming a stylized 'B'. Below the signature, the name 'B. ADAM TERRELL' is printed in a bold, uppercase font.

AFTRA H&R FUNDS

JUL 17 2013

APPEALS

NO. E194424

TRACY BYRD and MICHELLE BYRD      \$      IN THE DISTRICT COURT OF  
VS.    \$      JEFFERSON COUNTY, TEXAS  
AFTRA HEALTH & RETIREMENT      \$      112nd JUDICIAL DISTRICT  
FUNDS, AKA AFTRA H&R      \$

CERTIFICATE OF WRITTEN DISCOVERY TO DEFENDANT

TO: AFTRA Health & Retirement Funds, aka AFTRA H&R, served by citation with Plaintiff's Original Petition

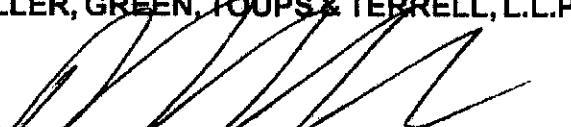
Plaintiffs Tracy Byrd and Michelle Byrd file this Certificate of Written Discovery to Defendant, and state that the discovery set forth below, along with a copy of this Certificate, is being served with citation, in accordance with the Texas Rules of Civil Procedure, on the Defendant named above in the manner specified.

DISCOVERY SERVED:

- PlaintiffS' Request for Disclosure to Defendant

Respectfully submitted,

WELLER, GREEN, TOUPS & TERRELL, L.L.P.

By: 

B. ADAM TERRELL  
Texas Bar No. 19790900  
Post Office Box 350  
Beaumont, TX 77704-0350  
Phone: (409) 838-0101  
Fax: (409) 832-2940

ATTORNEYS FOR PLAINTIFF

AFTRA H&R FUNDS

JUL 17 2013

NO. \_\_\_\_\_

APPEALS

TRACY BYRD and MICHELLE BYRD

§ IN THE DISTRICT COURT OF

VS.

§ JEFFERSON COUNTY, TEXAS

AFTRA HEALTH & RETIREMENT  
FUNDS, AKA AFTRA H&R

§ § JUDICIAL DISTRICT

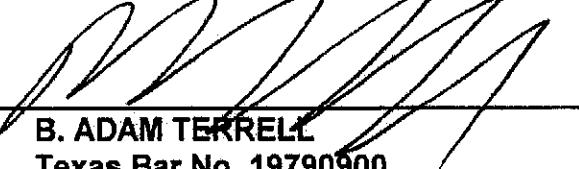
**PLAINTIFFS' REQUEST FOR DISCLOSURE TO DEFENDANT**

TO: AFTRA Health & Retirement Funds, aka AFTRA H&R, served by citation with Plaintiff's Original Petition

**COMES NOW** Plaintiffs Tracy Byrd and Michelle Byrd, by and through the undersigned attorney of record, and make the following Request for Disclosure pursuant to Rule 194, requesting that Defendant disclose, within 50 days of service of this request, the information or material described in Rule 194.2 (a) - (l) of the Texas Rules of Civil Procedure, more specifically set forth hereinbelow.

Respectfully submitted,

WELLER, GREEN, TOUPS & TERRELL, L.L.P.

By: 

B. ADAM TERRELL  
Texas Bar No. 19790900  
Post Office Box 350  
Beaumont, TX 77704-0350  
Phone: (409) 838-0101  
Fax: (409) 838-6780

ATTORNEYS FOR PLAINTIFF

- (a) List the correct names of the parties to the lawsuit.
- (b) List the name, address, and telephone number of any potential parties.
- (c) List the legal theories and, in general, the factual bases of the responding party's claims or defenses.
- (d) List the amount and any method of calculating economic damages.
- (e) List the name, address, and telephone number of persons having knowledge of relevant facts, and a brief statement of each identified person's connection with the case.
- (f) List for any testifying expert:
  - (1) expert's name, address, and telephone number;
  - (2) subject matter on which the expert will testify;
  - (3) general substance of the expert's mental impressions and opinions and a brief summary of the basis for them, or if the expert is not retained by, employed by, or otherwise subject to the control of the responding party, documents reflecting such information;
  - (4) if the expert is retained by, employed by, or otherwise subject to the control of the responding party:
    - (A) all documents, tangible things, reports, models, or data compilations that have been provided to, reviewed by, or prepared by or for the expert in anticipation of the expert's testimony; and
    - (B) the expert's current resume and bibliography.
- (g) Provide copies of any indemnity and insuring agreements as described in Rule 192.3(f).
- (h) Provide copies of any settlement agreements described in Rule 192.3(g).
- (i) Provide copies of any witness statements described in Rule 192.3(h).
- (j) Provide copies of all medical records and bills that are reasonable related to the injuries or damages asserted or, in lieu thereof, an authorization permitting the disclosure of such medical records and bills.
- (k) Provide copies of all medical records and bills obtained by the responding party by virtue of an authorization furnished by the requesting party.
- (l) The name, address and telephone number of any person or entity who may be designated as a responsible third party.

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TEXAS,  
BEAUMONT DIVISION

----- X  
TRACY BYRD AND MICHELLE BYRD, :  
: :  
Plaintiffs, : CIVIL ACTION NO.  
vs. : :  
AFTRA HEALTH & RETIREMENT FUNDS, :  
A/K/A AFTRA H&R, : :  
: Jury Demand  
: :  
Defendant. : :  
----- X

## Exhibit B

Original Answer of Defendant AFTRA Health &  
Retirement Funds a/k/a AFTRA H&R to Plaintiff's  
Original Petition.

\*\*\*EFILED\*\*\*

File & ServeXpress  
Transaction ID: 53340328  
Date: Jul 29 2013 12:20PM  
Lolita Ramos, Clerk

Cause No. E-0194424

**TRACY BYRD and  
MICHELLE BYRD,**

**Plaintiffs,**

**v.**

**AFTRA HEALTH & RETIREMENT,  
FUNDS, a/k/a AFTRA H&R,**

**Defendant.**

**§ IN THE DISTRICT COURT OF**

**§ JEFFERSON COUNTY, TEXAS**

**§ 172<sup>nd</sup> JUDICIAL DISTRICT**

---

**DEFENDANT'S ORIGINAL ANSWER**

---

Defendant AFTRA HEALTH & RETIREMENT FUNDS, a/k/a AFTRA H&R ("AFTRA H&R" or "Defendant") files this, its Original Answer to Plaintiffs, TRACY BYRD and MICHELLE BYRD ("Plaintiffs" or "Byrds") Original Petition, as follows:

**I. GENERAL DENIAL**

1. Pursuant to TEX. R. CIV. P. 92, Defendant generally denies each and every allegation contained in Plaintiffs Original Petition and demands strict proof of same. Defendant, subject to the foregoing general denial, and without waiving the same, specifically reserves the right to answer the allegations contained in Plaintiffs' Original Petition more fully at a later date when the facts concerning the same may be more exactly developed, this right being held pursuant to the Constitution and Laws of the State of Texas, and the Texas Rules of Civil Procedure.

**II. AFFIRMATIVE DEFENSES**

2. For further answer, and in the alternative, if such be necessary, and without limiting or waiving the above general denial, pursuant to TEX. R. CIV. P. 94,

Defendant would affirmatively show the Court that they had legal justification or excuse for any actions Defendant may have taken or not taken as to Plaintiffs.

3. For further answer, and in the alternative, if such be necessary, and without limiting or waiving the above general denial, pursuant to TEX. R. Civ. P. 94, Defendant would affirmatively show the Court that Plaintiffs have failed to mitigate their damages.

4. For further answer, and in the alternative, if such be necessary, and without limiting or waiving the above general denial, pursuant to TEX. R. Civ. P. 94, Defendant would affirmatively show the Court that it is not liable to Plaintiffs because Plaintiffs have failed to exhaust their administrative remedies.

5. For further answer, and in the alternative, if such be necessary, and without limiting or waiving the above general denial, pursuant to TEX. R. Civ. P. 94, Defendant would affirmatively show the Court that Plaintiffs' State law claims are preempted by the terms of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1001, *et seq.*

6. Plaintiffs seek benefits from AFTRA H&R that are not available under the Funds' governing plan documents.

7. Plaintiffs seek damages from AFTRA H&R that are not available under applicable law.

8. AFTRA H&R have paid their full liability on the claims at issue in accordance with their governing plan documents and no additional payments are due to Plaintiffs.

9. The determination with respect to Plaintiffs' claims was not arbitrary or capricious or an abuse of discretion and is entitled to deference under applicable law.

10. Defendant specifically reserves the right to add to or amend its answer to the allegations contained in Plaintiffs Original Petition more fully at a later date when the facts concerning the same may be more exactly developed following disclosures, discovery and investigation, this right being held pursuant to the Constitutions and laws of the United States and the State of Texas, and the Texas Rules of Civil Procedure.

WHEREFORE, PREMISES CONSIDERED, Defendant AFTRA H&R respectfully prays that Plaintiffs' Original Petition be dismissed; that Plaintiffs take nothing by their suit, and that AFTRA H&R be granted such other and further relief, including costs and attorney's fees, to which it may be entitled.

Respectfully submitted,

PATRICK M. FLYNN, P.C.

/s/Patrick M. Flynn  
PATRICK M. FLYNN  
Texas Bar No. 07199200  
1225 North Loop West, Suite 1000  
Houston, Texas 77008-4722  
(713) 861-6163  
(713) 961-5566 (fax)  
[pat@pmfpc.com](mailto:pat@pmfpc.com)

COHEN, WEISS AND SIMON

/s/Zachary N. Leeds\*  
Lisa M. Gomez  
Zachary N. Leeds  
330 West 42<sup>nd</sup> Street  
New York, New York 10036-6979

(212)356-0243  
(646) 473-8243

\* by permission

ATTORNEYS FOR DEFENDANT  
AFTRA HEALTH & RETIREMENT  
FUNDS, a/k/a AFTRA H&R

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing *Defendant Aftra Health & Retirement Funds a/k/a Aftra H&R* has been forwarded, via U.S. first class mail, this 29<sup>th</sup> day of July 2013, to the following:

Mr. B. Adam Terrell  
Weller, Green, Toups & Terrell, L.L.P.  
Post Office Box 350  
Beaumont, Texas 77704-0350

/s/Patrick M. Flynn  
**PATRICK M. FLYNN**

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TEXAS,  
BEAUMONT DIVISION

-----  
TRACY BYRD AND MICHELLE BYRD, :  
:  
Plaintiffs, : CIVIL ACTION NO.  
vs. :  
AFTRA HEALTH & RETIREMENT FUNDS, :  
A/K/A AFTRA H&R, : Jury Demand  
:  
Defendant. :  
----- X

## Exhibit C

Certified copy of State Court docket sheet in  
Cause No. E-0194424, *Tracy Byrd and Michelle Byrd*  
*v. AFTRA Health & Retirement Funds a/k/a*  
*AFTRA H&R*, In the 172<sup>nd</sup> Judicial District Court  
of Jefferson County, Texas.

PAGE OF 1  
E-FILE: 6/07/13 TO CURRENT

CIVIL DOCKET, DISTRICT COURT  
CASE NO. E-01944424-

I CERTIFY THIS AS A TRUE COPY  
Witness my Hand and Seal of Office

Witness my Hand and Seal of Office

AUG 1 2013

LOUITA RAMOS, DISTRICT CLERK  
JEFFERSON COUNTY, TEXAS  
*Louita Ramos*  
MAY 1966

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TEXAS,  
BEAUMONT DIVISION

----- X  
TRACY BYRD AND MICHELLE BYRD, :  
: :  
Plaintiffs, : CIVIL ACTION NO.  
vs. : :  
AFTRA HEALTH & RETIREMENT FUNDS, :  
A/K/A AFTRA H&R, : :  
: Jury Demand  
: :  
Defendant. : :  
----- X

## Exhibit D

Orders from the State Court in this case served upon  
Defendant Funds

IN RE ALL CASES FILED  
IN THE 172<sup>ND</sup> DISTRICT COURT  
  
(WITH EXCEPTIONS) AS OF  
AUGUST 15, 2008

IN THE 172<sup>ND</sup> DISTRICT COURT OF  
JEFFERSON COUNTY, TEXAS  
172<sup>ND</sup> JUDICIAL DISTRICT

ORDER DESIGNATING ALL CASES E-FILE  
AND  
SETTING FORTH CERTAIN REQUIREMENTS  
IN E-FILE CASES

AFTRA H&R FUNDS  
JUL 17 2013  
APPEALS

IT IS HEREBY ORDERED that, henceforth, all cases filed in the 172<sup>nd</sup> District Court of Jefferson County, Texas, shall be, and they are designated E-file cases in accordance with Local Rule 7, EXCEPT that tax cases, cases filed by pro se parties, and seizure and forfeiture cases, shall not be so designated, subject to further orders of this court.

IT IS FURTHER ORDERED that the District Clerk shall not receive any pleadings whatsoever in E-file cases in paper form, save and except for the original petition and return citations, and the District Clerk shall not electronically scan paper pleadings to E-file. If the District Clerk receives a paper pleading in an E-file case, the Clerk is ORDERED to return that pleading to the purported filer with a notification that the case is E-file and that no paper pleadings can be received, file-stamped, nor scanned. The attached *Efile Administrative Procedures* shall apply for electronic filing or efiling.

IT IS FURTHER ORDERED that the District Clerk shall send the notice appended hereto to all new parties to a lawsuit, whether original defendants, cross defendants, or otherwise, advising of this order and of the requirements of Local Rule 7.

IT IS FURTHER ORDERED that the District Clerk must be furnished with an electronic disk of all parties in cases involving 10 plaintiffs or defendants or a combination of both, including the addresses of those receiving service, in a format prescribed by the District Clerk.

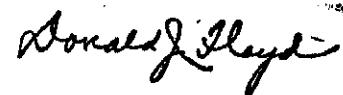
IT IS FURTHER ORDERED that each pleading in cases designated as E-file shall be fully and properly labeled, and a pleading shall deal with only one subject matter. Thus, for example, a Motion To Transfer Venue may not be combined with an Answer, but they shall be two separate pleadings, each labeled accordingly and filed separately. In similar fashion, all matters shall be separately pleaded, labeled, and filed, and there shall be no "gang filing". The purpose of this requirement is so that separate matters may be readily indexed and located in the electronic file.

SIGNED AND ENTERED THIS 14<sup>TH</sup> DAY OF JULY, 2008.

I CERTIFY THIS AS A TRUE COPY  
Witness my Hand and Seal of Office

JUN 07 2013

LOLITA RAMOS, DISTRICT CLERK  
JEFFERSON COUNTY, TEXAS  
DEPUTY  

DONALD J. FLOYD, JUDGE  
172<sup>ND</sup> DISTRICT COURT

**EFILE ADMINISTRATIVE PROCEDURES OF THE  
172<sup>ND</sup> DISTRICT COURT  
JEFFERSON COUNTY, TEXAS**

AFTRA H&R FUNDS

JUL 17 2013

APPEALS

**1. Documents that must be electronically filed; Exceptions**

Each document that must be filed under the Rules shall be eFiled unless otherwise ordered by the Court. Except that paper copies of any Original Petition shall be filed to facilitate service of process as required by the Rules and by statute. Paper courtesy copies of pleadings seeking judicial action shall only be filed at the discretionary request of the assigned judge. The cover page must indicate "COPY" and include the assigned Transaction ID number. An additional exception to the requirement of e-filing shall apply to return citations, survey maps, building plats, and similar descriptive exhibits. Such documents shall be submitted to the District Clerk, but the submitting party shall also e-file notice to all parties of the submission.

**2. Form of Documents Electronically filed**

(a) *Format.* Each electronically filed document shall be filed in Word, WordPerfect, TIFF or .PDF format, except that each electronically filed brief and proposed order shall be filed in editable Word or WordPerfect format. To the extent practicable each document shall be formatted in accordance with the applicable rules governing formatting of paper documents, and in such other and further format as the District Clerk or Judge may require from time to time. A document may exceed page limitation rules to a maximum of two (2) additional pages when the additional pages are attributed to the electronic conversion or filing process.

(1) eFile will automatically convert any Word, WordPerfect or TIFF file to .PDF format, but the original format will also be available for downloading.

(2) The official record of the court is the .PDF version.

(b) *Title of Documents.* The title of each electronically filed document shall include:

(1) Party or parties filing the document,

(2) Descriptive title of the document,

(3) Party or parties against whom relief, if any, is sought, and

(4) Nature of the relief sought (e.g., Defendant ABC Corporation's Motion for Summary Judgment against Plaintiff Jones).

(c) *Signature.*

Each electronically filed document shall be deemed to have been signed by the attorney authorizing such filing, and shall bear a facsimile or typographical signature of such person, e.g., "/s/ Adam Attorney." Each document eFiled by or

on behalf of a party shall also include the typed name, address, and telephone number of the attorney filing such document. Attorneys shall include their Texas bar number.

Each electronically filed declaration and affidavit shall be deemed to have been signed by the declarant or affiant if an attorney or party not represented by an attorney has authorized such filing. The original affidavit or declaration filed or served electronically, shall be maintained by the party filing the affidavit during the pendency of the litigation, and shall be made available, upon reasonable notice, for inspection by other counsel, the District Clerk or the Court.

(d) *Discovery* - in E-file cases, only the certificates of serving discovery requests and responses shall be E-filed; neither the requests nor responses shall be eFiled nor need be efiled. (See Local Rule pertaining to *Filing of Discovery and Related Materials in Civil Cases in Jefferson County, Texas.*)

**3. Time of eFiling and Service**

(a) Any document filed electronically by 11:59 pm ET shall be considered eFiled with the District Clerk once the transmission is successfully completed ("authorized date and time") as recorded on the LexisNexis File & Serve system.

(b) An eFiled document is deemed served only upon selection of parties to be served and submission according to the File & Serve procedures. The electronic service of a pleading or other document in the eFiling system is considered valid and effective service on all parties and shall have the same legal effect as conventional service of an original paper or document. The filing party is not required to conventionally serve a paper copy of the electronically filed document on parties not subscribing to the eFiling system. LexisNexis shall serve subscribing parties electronically and non-subscribing parties via facsimile or US Mail. The associated filing receipt will list the parties selected for service and give proof of date, time and method of service.

**4. Public Access to the Docket**

The District Clerk shall make a Public Access Terminal available to interested parties to allow access to the Court's electronic case record in all eFiled cases. Copies made from the Court's electronic case records shall be printed by the District Clerk's office and copying fees will be charged in accordance with District Clerk's copying fees.

**5. Obligation of Registered eFile Users to Maintain Proper Delivery Information.**

Parties or attorneys who register to use the File & Serve system shall notify LexisNexis File & Serve within 10 days of any change in firm name, delivery address, fax number or e-mail address.

Jane Birge  
Chief Deputy



Domestic Relations  
409-835-8653

Child Support  
P. O. Box 3586  
Beaumont, Texas 77704  
409-835-8425

**DISTRICT CLERK  
LOLITA RAMOS**

AFTRA H&R FUNDS

JUL 17 2013

APPEALS

**Instructions for Opening an Account with Lexis Nexis Efilng System**

The following is information to assist an Attorney in opening an account with Lexis Nexis File and Service:

The Customer Support Contact Number is  
**1-888-529-7587**

The Website Address is:  
<http://www.lexisnexis.com/fileandservice>

Directions for On-Line Registration:

1. Look under Law Firms and click on Efilng and Service Solutions for Law Firms
2. On next page, click on link: Lexis Nexis File and Service Court Based Efilng and Service
3. On next page, click on link: Register Now
4. On next page, click on link: Register

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TEXAS,  
BEAUMONT DIVISION

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:  
**TRACY BYRD AND MICHELLE BYRD,** :  
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**Plaintiffs,** : **CIVIL ACTION NO.**  
:  
vs. : \_\_\_\_\_  
:  
**AFTRA HEALTH & RETIREMENT FUNDS,** :  
**A/K/A AFTRA H&R,** : **Jury Demand**  
:  
:  
**Defendant.** :  
:  
----- X

## Exhibit E

List of all parties to case and party type, together with list of counsel of record, including addresses, telephone numbers and parties represented.

**Exhibit B to AFTRA Health & Retirement Funds a/k/a AFTRA H&R Notice of Removal**

Pursuant to 28 U.S.C. § 1446(a) and Local Rule CV-81, defendant states as follows:

I. The names of the parties, their type, and their counsel are as follows:

**Plaintiffs Tracy Byrd and Michelle Byrd, represented by:**

B. Adam Terrell, Esq.  
Texas Bar No. 19790900  
WELLER, GREEN, TOUPS & TERRELL, LLP  
Post Office Box 350  
Beaumont, TX 77704  
Telephone (409) 838-0101  
Facsimile (409) 832-2940  
[baterrell@wgttlaw.com](mailto:baterrell@wgttlaw.com)

**Defendant AFTRA Health & Retirement Funds a/k/a AFTRA H&R, represented by:**

PATRICK M. FLYNN Texas Bar No. 07199200 1225 North Loop West, Suite 1000 Houston, Texas 77008-4722 Telephone (713) 861-6163 Facsimile (713) 961-5566 <a href="mailto:pat@pmfpc.com">pat@pmfpc.com</a>	Lisa M. Gomez Zachary N. Leeds COHEN, WEISS AND SIMON 330 West 42nd Street New York, New York 10036-6979 Telephone (212) 356-0243 Facsimile (646) 473-8243 <a href="mailto:lgomez@cwsny.com">lgomez@cwsny.com</a> <a href="mailto:zleeds@cwsny.com">zleeds@cwsny.com</a>
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II. Plaintiffs have requested trial by jury. Defendant contends that Plaintiffs are not entitled to trial by jury. *Calamia v. Spivey*, 632 F.2d 1235 (5th Cir. 1980).

III. The name and address of the Court from which the case is being removed is the District Court of Jefferson County, 172nd Judicial District, Jefferson County Courthouse, 1001 Pearl Street, Beaumont, TX 77701. The matter is currently pending before the Jefferson County District Court.